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Source: *The American Historical Review*, Vol. 59, No. 3 (Apr., 1954), pp. 543-567

Published by: [Oxford University Press](#) on behalf of the [American Historical Association](#)

Stable URL: <http://www.jstor.org/stable/1844716>

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Scholarly Privileges: Their Roman Origins and Medieval Expression

PEARL KIBRE

THE conferring of academic degrees to the accompaniment of the phrase, "with all the rights, privileges, and immunities, thereunto pertaining," has become so commonplace a proceeding in American colleges and universities that the significance of the accompanying phrase is lost to view. Otherwise this bestowal of peculiar rights, privileges, and immunities upon university graduates, who would thus be set apart from the ordinary run of the population, would be denounced as an anachronism in an age of equalitarian ideals. However, the continued use of these terms, now so obsolete in their practical application, illustrates cogently the persistent force of tradition, even in a world of rapid physical and material change. Such verbal symbols of a bygone era preserve at least the memory of a past in which such rights, privileges, and immunities were the usual concomitants of the scholarly status. They may also serve to whet our curiosity as to their nature and history.

The history of the rise, development, and decline of these scholarly rights and privileges is such a long and varied one and is so intimately bound up with the social and political events of the centuries which saw their development and decline that an adequate historical account of them would require a much more extensive consideration than is here possible. Nevertheless, in anticipation of the fuller treatment which the history of these rights and privileges merits, current interest in them would appear to justify a brief summary of their Roman origins and of some instances of their expression in Europe in the Middle Ages, the time of their fullest development.¹

In origin, scholarly privileges may be traced back to specific provisions in the body of Roman law. The concept that scholars, particularly those who were masters of liberal arts—grammar and rhetoric—together with physicians who were concerned with the healing of the sick, merited special privileges and immunities at the hands of the Roman state was already well es-

¹ This paper was read before the Faculty Humanities Club of Hunter College on April 27, 1953. It is an outgrowth of work on a longer study now in preparation, "The Rights, Privileges, and Immunities, of Scholars and Universities in the Middle Ages." Much of the material for the study was gathered in European libraries during the year 1950-51 under a John Simon Guggenheim Memorial Foundation Fellowship.

tablished in imperial legislation before the second century.² Under the rescripts of the emperors Vespasian and Hadrian, who were said to have followed the traditions of their predecessors, professors of liberal arts, grammarians, orators, medical men, and philosophers, were exempted from compulsory civic duties and were granted immunity from the obligation to quarter soldiers and to render military service. Also by decree of Vespasian, those who taught rhetoric or oratory were to receive a public salary with their privileges and immunities.³ Confirmation of these privileges with some additions by succeeding emperors followed. Emperor Commodus, son of the philosopher emperor Marcus Aurelius, added provisions for the exemption of scholars from the regulations pertaining to the purchase of wheat, wine, and oil; from the requirements that they accord hospitality to foreign guests; from the obligation to serve as jurors or legates; and from the necessity of serving unwillingly in the militia, or of performing any other compulsory public service.⁴

Constantine the Great reiterated and extended these privileges and exemptions. He accorded medical men, particularly those who were esteemed as chief among the physicians, also the grammarians and other professors of literature and doctors of law, together with their wives and children and the property that they possessed in the municipalities, immunity from all civic and public obligations and levies. Even in the provinces they were not to be required to entertain foreign guests nor to quarter soldiers in their homes. They were to be protected against being summoned unduly into court and from suffering any indignities or personal injury, since anyone who molested a professor would be obliged to pay a heavy fine. And the fine exacted by the magistrates would be handed over to the professor as payment for the injury he had received. Constantine the Great further ordered that salaries be paid regularly to the physicians and professors by the state and municipalities,

² *Corpus iuris civilis*, editio stereotypa quinta, I: *Institutiones*, ed. Paul Krueger; *Digesta*, ed. Theodor Mommsen; II: *Codex Iustinianus*, ed. Paul Krueger; III: *Novellae*, ed. R. Schoell and W. Kroll (Berlin, 1888-95). References to this edition will be made under the abbreviations: *Instit.*; *Digest*; *Codex*; and *Novellae*. For the rescripts cited above, see *Codex*, X, 46 (45) and X, 47 (46). Poets were not to enjoy any of the immunities noted; this was also true of professors of liberal studies and of physicians, until the law of the decurions. *Codex*, X, 53 (52), 3, 4, 5. Even grammarians and rhetoricians, if they did not prove useful to their students, were not to be considered eligible for immunities. *Codex*, X, 53 (52), 2.

³ *Digest*, L, IV, 18 (cf. *Codex*, X, 41); and *Digest*, L, V, 8, 4 (cf. *Codex*, X, 45-47). Those who taught children primary letters were not to have immunity from civic duties. Papinianus (*Digest*, L, V, 8, 3), in the first book of responses, stated that he who had exemption from public duties might rightly refuse to contribute to the collections of money arbitrarily imposed by the magistrates, but he ought not to refuse to pay those imposed under the law. See also Hermann Conring, *De antiquitatibus academicis dissertationes septem* (Göttingen, 1739), pp. 115-16.

⁴ *Instit.*, XXVII, 1, "De Excusationibus," 6, 8; Conring, p. 116.

as had Vespasian two centuries earlier.⁵ These privileges were further confirmed by other emperors in the fourth and early fifth century, and particularly by Honorius and Theodosius II, so that, as Constantine declared, scholars might the more easily devote themselves to liberal studies and to the memorable arts.⁶

In granting these privileges and immunities some efforts were also made from the first century on to limit the number of persons to whom they could apply. Emperor Antoninus asserted that in small cities only eleven might enjoy the special privileges, that is, five physicians, three rhetoricians, and three grammarians, while in larger cities the number might be increased to fifteen, seven physicians, four rhetoricians, and four grammarians; and in the largest cities to twenty, ten physicians, five rhetoricians, and five grammarians. Prohibitions were also drawn up against exceeding these numbers.⁷ Other emperors, particularly Theodosius and Valentinian, in the fifth century, further defined the classes of persons entitled to enjoy the special grants of privileges.⁸

The practice of confirming these customary grants of privileges was continued in the sixth century by Justinian, according to the rescripts in the *Corpus iuris civilis*. The earlier practice of paying salaries to grammarians and orators as well as to physicians and lawyers was also renewed so that "they might continue to devote themselves to their profession and to teaching" and that they might thus guarantee "that youths learned in the liberal arts would flourish in public affairs."⁹ Such considerations came henceforth to be regarded as an integral part of the Roman tradition. They were reasserted and emphasized whenever and wherever Roman traditions were stressed. They had already received sympathetic support in the early sixth century from the Ostrogothic leaders who, under the tutelage of their Roman teachers in Italy, encouraged the principle of keeping alive and active "the wisdom and grace of Roman learning." Theodoric and his immediate successors, his daughter, Amalasuntha, and her son, Athalaric, under the influence of their Roman secretary, Cassiodorus, had shown particular favor to those engaged in the study and teaching of liberal arts.¹⁰ Athalaric through

⁵ *Codex*, X, 53 (52), par. 6 (a. 333); Conring, p. 119.

⁶ *Codex*, X, 53 (52), par. 6, 7 (a. 362), 8 (a. 369), 11 (a. 414); see also *Digest*, L, V, 8; L, VI, 7 (6).

⁷ *Instit.*, XXVII, 1, 6, "ex epistula Antonini quae data est ad commune Asiae, sed pertinet ad orbem universum."

⁸ *Codex*, XII, 15 (a. 425); XII, 40 (41), 8 (a. 427).

⁹ *Codex*, X, 47 (46), "De decretis decurionum"; *Novellae*, "Appendix Constitutionum dispersarum," VII, 22 (a. 554); *Digest*, L, XIII, 4. See also Conring, pp. 33-34.

¹⁰ Cassiodorus, *Variae*, Liber I, Epistola 45 (a. 507); III, Epistola 33 (a. 510-11), in *Monumenta Germaniae historica, Auctorum antiquissimorum*, XII, ed. T. Mommsen (Berlin,

the pen of Cassiodorus had expressed his concern for the lot of professors whom he had heard were not receiving adequate rewards for their labors. "We consider it an impious deed," he asserted, "to take away anything from the teachers of our youths, since they should rather be encouraged in their magnificent work by an increase of emoluments." He urged that adequate provisions be made to see that professors were paid at regular intervals so that they might not lack the means of subsistence nor be entirely dependent upon others. "For if to stage actors for amusing the people, we give generously of our wealth, how much the more generously and promptly ought we not reward those who are responsible for our honorable conduct and for developing in our palace natural talents and eloquence." The Roman senate was asked to make adequate provisions to meet forthwith the needs of the professors and doctors so that there should be no more complaining from them. For, it was insisted, they ought not to be occupied with two cares at once—how to live tolerably and how to teach—but rather they should be able to transfer the entire force of their talents to the cultivation of the liberal arts.¹¹

To this Roman tradition Charlemagne in A.D. 800 and his immediate successors adhered when, in accordance with the theory of the translation of the empire, they revived the Roman imperial title in the west and declared themselves to be the successors of the Roman Caesars, Augustus, Constantine, and Justinian. The renewed emphasis that this revival of the empire placed upon studies of Roman institutions and culture was reflected also in the desire of these Teutonic emperors to do honor to those who cultivated these studies.¹² Charlemagne's biographer and secretary, Einhard, particularly stressed his master's great veneration for those who taught liberal arts and emphasized the emperor's interest in having them highly honored.¹³

It would be vain, however, to conclude that such respect for those who studied and taught the liberal arts had any necessary or widespread acceptance among the greater number of the Teutonic warriors from the early sixth century onward. According to Procopius, court historian for Justinian at

1894), 39-40, 96-97; and see particularly Eleanor S. Duckett, *The Gateway to the Middle Ages* (New York, 1938), pp. 8 ff.

¹¹ Cassiodorus, *Variae*, Liber IX, Epistola 21 (a. 533), MGH, XII, 286-87; Duckett, p. 89.

¹² Conring, pp. 72-73, 85; M. L. W. Laistner, *Thought and Letters in Western Europe, A.D. 500-900* (New York, 1931), pp. 149 ff.; H. Koeppler, "Frederick Barbarossa and the Schools of Bologna: Some Remarks on the 'Authentica Habita,'" *English Historical Review*, LIV (1939), 578 ff.

¹³ Einhard, "Vita Karoli Imperatoris," par. 25, in *Omnia quae exstant opera*, Latin text with French translation, ed. and tr. A. Teulet, Société de l'histoire de France, Publications, XIX (Paris, 1840), I, 80-81.

Constantinople, the mother of Athalaric in her desire to foster in her son a love of learning had had to fight against bitter opposition from Gothic leaders who insisted that "letters . . . are far removed from manliness," and that "the teaching of old men results for the most part in a cowardly and submissive spirit." They urged rather that her son "take his training in arms."¹⁴ Even in Constantinople, despite Justinian's rescripts confirming the privileges granted by his predecessors to teachers and doctors, the lot of such persons may well have deteriorated in the sixth century. Such at least is the testimony of the fault-finding and highly suspect *Secret History* attributed to Procopius. In that work Justinian is charged with having "caused physicians and teachers of free-born children to be in want of the necessities of life. For the allowances of free maintenance which former Emperors had decreed should be given to men of these professions from the public funds he cancelled entirely. . . . And thereafter neither physicians nor teachers were held in any esteem."¹⁵

However, even without these reminders of the inadequacy of decrees and constitutions to portray fully the contemporary scene, it would appear patently clear that Roman imperial rescripts, or the pronouncements of those following in the Roman tradition, could have guaranteed little safety or security to scholars or teachers in the years when imperial power was not only too weak to enforce its authority in the west but was physically or militarily incapable of repelling the invader or of providing the most rudimentary protection against both internal or external foes. The lot of the scholar, professor or student, untrained and ill equipped to protect himself, would doubtless have been well nigh untenable if it had not been for the close association, from an early date, of lay scholars with ecclesiastics. The Church Fathers and succeeding theologians might differ as to the amount and content of pagan or secular learning that was necessary for the faithful follower of Christian doctrine, but they were generally agreed that a thorough grounding in the basic liberal arts was necessary for comprehending the Scriptures. The moral force of the church as a protective agency was therefore extended to include lay scholars as well as ecclesiastics. Both henceforth found a haven in religious or monastic communities and enjoyed the clerical rights, privileges, and immunities which were eventually incorporated into the body of canon law. These, in part, coincided with the traditional rights, privileges, and immunities set forth in the body of Roman civil law, particularly in

¹⁴ *Procopius*, with an English translation by H. B. Dewing, Loeb Classical Library (7 vols., London, 1914-40), III: *History of the Wars, Books V and VI* (1919), book V, ii, 11 ff.; Duckett, pp. 8-9.

¹⁵ *Procopius*, VI: *Anecdota or Secret History* (1935), xxvi, 2-8.

regard to freedom from military levies and from civic obligations and duties. They included, in addition, the peculiarly clerical privileges of immunity from the jurisdiction of the local civil and feudal courts. As clerics, scholars, both lay and ecclesiastic, were to be judged and disciplined solely by their ecclesiastical superiors and by the ecclesiastical courts.¹⁶

Such were the scholarly privileges in theory. In practice, however, the extent to which professors and students actually enjoyed such rights and privileges was dependent upon the co-operation of the local magistrates of the specific locality, town, or city in which the scholars resided. The diversities and extreme localism reflected in feudal society and in the narrowly exclusive limitations of citizenship in the Middle Ages were especially detrimental to those who traveled about. Persons who left the territories of their feudal lords also left behind them their legal protectors, and residents of one city who traveled to another enjoyed no civic rights in the latter and had no legal protection there.¹⁷ The position of foreigners or nonresidents was thus a very difficult and precarious one. And the degree to which they would be tolerated or would be permitted to remain secure in their persons and property was dependent upon whether there had been concluded in their behalf a private pact or agreement. Such a private pact pertaining to particular individuals constituted a *privilegium*, defined by Gratian in the *Decretum* as a private law in contrast to a general law, such as the universal or provincial statute of a council or a papal decretal.¹⁸ The *privilegium*, since it was a specific legal grant, was always written down, and the document in which it was written was itself called a *privilegium*. It had the force of law only when it could be produced to prove the contention of those who claimed redress under its provisions. Thus the most carefully guarded treasures of the university were the *privilegia* which secured to the scholars and the university their rights and privileges.¹⁹

The need for such private pacts or privileges in the case of traveling scholars was particularly acute. Not only did they share with other travelers the dangers and insecurity of the times wherein even the papal legates and

¹⁶ *Corpus iuris Canonici*, ed. Emil Ludwig Richter and Emil Albert Friedberg (2d ed.; Leipzig, 1879-81), Pt. I: *Decretum Magistri Gratiani*; Pt. II: *Decretalium collectiones*. On learning and the clergy, see Pt. I, *Distinctio*, XXXVI-XXXVIII. Pt. II, *Decretal*, Gregor, IX, Lib. V, tit. XXXIII; *Sexti Decretal*, Lib. V, tit. VII, relate to clerical privilege.

¹⁷ Hastings Rashdall, *The Universities of Europe in the Middle Ages*, new ed. by F. M. Powicke and A. B. Emden (London, 1936), I, 150-51.

¹⁸ *Decretum Magistri Gratiani*, I, col. 4-5.

¹⁹ Herbert E. Salter, ed., *The Medieval Archives of the University of Oxford*, Oxford Historical Society, nos. 70, 73 (1920-21), I, p. viii. On August 7, 1327, the official of the bishop of Paris denounced those who kept or hid the charters containing the privileges of the university. *Chartularium universitatis Parisiensis*, ed. Heinrich S. Denifle and E. Chatelain (Paris, 1889-97), II, no. 866, pp. 303-304.

the emperor himself were not safe but the students and masters had far less opportunity or means for retaliation and defense than did the others.²⁰ It was therefore of inestimable value that traveling scholars, from the twelfth century on, were able to secure the conclusion in their behalf of such pacts and agreements, or grants of privileges, from the chief centralizing agencies in western Europe, namely, the emperors, popes, and the rising monarchs.

The first important medieval grant of privileges intended primarily for lay students and professors of canon and civil law was the famous *authentica Habita* granted by Emperor Frederick Barbarossa at the Diet of Roncaglia in November, 1158.²¹ The diet itself had nothing to do with scholars since it was a diet or council of the kingdom of Lombardy which had been called to settle the disputes between Frederick and the Lombard cities. However, in the course of the discussion of more serious political problems, the emperor made the pronouncement relating to scholars. He did this probably with the advice and counsel of the group of Bolognese professors of law who were present as his advisers and who were of course familiar with the earlier Roman imperial rescripts favoring professors and doctors. In the *Habita* Frederick granted imperial protection and safe conduct to all persons who traveled or resided in imperial lands for purposes of study both on the way to and during their stay at the place of learning. Although the emperor gave these guarantees of protection or safe conduct probably in connection with the edict for the maintenance of the public peace which he also issued at this same Roncaglian diet, he singled out the scholars as particularly worthy of protection and favor "since the whole world is illuminated by their learning." He did so possibly also as a reward to the Bolognese teachers of Roman law who had supported the imperial claims.²² In the *Habita* the emperor took occasion to bespeak his compassion for "those who exile themselves through love of learning, those who prefer to wear themselves out in poverty rather

²⁰ Alexander Budinszky, *Die Universität Paris und die Fremden an derselben im Mittelalter* (Berlin, 1876), pp. 56-57. For injuries inflicted on a papal legate even as late as 1347, see *Chart. univ. Paris.*, II, no. 1145, pp. 607-608; and for the emperor and his ambassadors, Koeppler, in *English Historical Review*, LIV (1939), 595, n. 2. Rashdall points out, as illustration of the fact "that the grievances against which the foreign student wanted protection were not merely sentimental . . . the frequent occurrence of a privilege exempting scholars from torture except in the presence of and with the sanction of the Rectors." Rashdall, I, 150, n. 2.

²¹ Koeppler, pp. 577-607, has here newly edited the text of the *authentica Habita* (at pp. 606-607), from a Vatican manuscript (Palat. 761).

²² Anna T. Sheedy, *Bartolus on Social Conditions in the Fourteenth Century* (New York, 1942), pp. 129 ff.; Henry Malden, *On the Origin of Universities and Academic Degrees* (London, 1835), pp. 48 ff. One of the most prominent of the Bolognese professors of law, Irnerius, had played an important part in the support of Henry V. The Bolognese professors in close attendance upon Frederick Barbarossa were Bulgar, Martin Gosia, and Hugo and Iacopo della Porta of Ravenna. As Koeppler points out (pp. 586 ff.), these famous doctors were acting as Frederick's assessors in hearing complaints and in settling suits.

than to enjoy riches, and those who expose their lives to every peril, so that, defenseless, they must often suffer bodily injury from the vilest of men."²³

In addition to providing for imperial protection and safe travel, the *Habita* contained the assertion that scholars might not be injured nor taken in reprisals for the debts of the province or city to which they belonged. Anyone who violated this provision was to pay fourfold damages and was to suffer infamy and loss of any public position that he might hold.²⁴ The practice of reprisals to which the students were singularly exposed was commonly employed in the Middle Ages as a means of bringing pressure to bear upon a town to force its citizens to meet their individual obligations in another town. This was accomplished by the process of holding responsible all the citizens of a town or locality from which a merchant or other individual had failed to pay a debt or had refused to answer to charges for a crime that he was alleged to have committed. That is, as Pollock and Maitland pointed out, the law of reprisals enforced the principle of collective responsibility, or rather of "collective liability," under which "the group was held responsible for the debts of each of its members and vice versa." Exemptions from the application of the law of reprisals were also given to clerics and were frequently included in charters drawn up for the protection of traveling merchants.²⁵

The *authentica Habita* provided further that scholars who committed offenses against local laws had a right to decline the ordinary jurisdiction of the town and to choose instead as judge either their own teachers or the bishop of the diocese. Similarly, where a scholar was the plaintiff, the case must be tried before either of these judges, according to the scholar's choice, and at the place of the schools. Anyone who tried to bring suit against a scholar before another judge would lose his case regardless of the excellence of his claim. This privilege of the choice of their judges by the students was probably derived from Justinian, as both Rashdall and Koeppler pointed out.²⁶ It was also in conformity with the prevailing customs of Lombardy, where, as a result of the intermixture of peoples, each with their own national and tribal laws, individuals were customarily permitted to declare under what law they wished to live and be judged, whether Roman, Lombard, Frankish, or Salic. The option given the student to choose between his master

²³ Koeppler, p. 607.

²⁴ Koeppler called attention to the exemption from reprisals as one of the most important privileges granted in the *Habita* (pp. 595-600, 600-604, text, p. 607); Sheedy, pp. 139 ff.

²⁵ Koeppler, pp. 595-97, 600; Peter Rebuff, *Privilegia universitatum, collegiorum, bibliopolarum, et omnium demum qui studiosis adiumento sunt* (Frankfort, 1583), pp. 230-31. See also Bartolus, "Tractatus Represaliarum," *Consilia* (Lugduni, 1546), fol. 121 recto; Pollock and Maitland, *History of English Law* (2d ed., Cambridge, 1923), I, 682-83.

²⁶ Rashdall, I, 144 and note, 145; Koeppler, pp. 604-605; and see also Sheedy, pp. 139 ff.

or professor and the bishop was the choice between civil or ecclesiastical law. At first the masters exercised jurisdiction even in criminal matters. But later they surrendered this jurisdiction to the city.²⁷

The basic scholarly privileges thus enumerated in the *authentica Habita*, namely, of protection and safe conduct, exemption from reprisals, and the right of exclusive judicial jurisdiction, came in succeeding years to be considered models for future grants of privileges. Other lay potentates throughout Europe sought, by provisions similar to those of the *Habita*, to secure for students and masters in their realms privileges and immunities theoretically assigned to them in Roman civil and canon law.

In France, where the ecclesiastical character of the early schools might have been construed as a sufficient guarantee that the masters and scholars would enjoy such privileges and immunities without further provisions, it was nevertheless necessary for popes and monarchs to issue specific decrees to ensure the untrammelled enjoyment of these privileges by the scholars despite their clerical status. In the second half of the twelfth century, Pope Alexander III ordered the townspeople of Reims to permit scholars, according to their accustomed liberty, to be under the jurisdiction of their own masters in cases either of a civil or ecclesiastical nature; and toward the close of the same century, Pope Celestine III specifically asserted that "clerics" in Paris were to be under the exclusive jurisdiction either of the bishop of Paris or of the abbot of Ste. Geneviève in all judicial cases and that all such cases would be decided according to canon law. Pope Celestine III had also ruled that clerics who were accused of such crimes as theft, homicide, perjury, and so on must be brought first before an ecclesiastical judge.²⁸ These papal pronouncements in favor of clerics were expressly endorsed, for the Paris scholars, by King Philip Augustus, in 1200, in his charter of liberties for the university, in the assertion that all suits involving scholars, even criminal cases, must first come before the bishop of Paris.²⁹

The occasion for the king's grant of privileges was the riot of 1200, the first major "town and gown" disturbance in Paris. Like so many others of its kind, this affair had begun in a tavern brawl and had ended with the death

²⁷ Rashdall, I, 151; Malden, pp. 50-51; Conring, *De antiq. acad.*, pp. 144-50. For the situation in Bologna, see Sheedy, pp. 140 ff.

²⁸ Rashdall, I, 290-91, and notes; *Chart. univ. Paris.*, I, Introd., no. 5 (A.D. 1170-72); and the Bull of Celestine III (A.D. 1191-98), *ibid.*, Introd., no. 15; Abbé Feret, "Les origines de l'Université de Paris et son organisation au XII^e et XIII^e siècles," *Revue des questions historiques*, LII (1892), 355-57; Emile Lesne, *Histoire de la propriété ecclésiastique en France: Les écoles de la fin du VIII^e siècle à la fin du XII^e*, Facultés Catholiques de Lille, Mémoires et travaux, fasc. 50 (Lille, 1940), V, 266.

²⁹ César E. Du Boulay, *Recueil des privilèges de l'université de Paris* (Paris, 1674), p. 5; *Chart. univ. Paris.*, I, no. 1, pp. 59-61; and see below, n. 33.

of a number of students. The university masters appealed in a body to the king for redress of their grievances and the king responded to the university petition by his grant of the charter of liberties. At the same time he had provided that the provost of Paris together with several of his accomplices be severely punished for their part in the riot, and that the university masters and scholars be given assurances of royal protection and of their immunity from arrest by order of the municipal magistrates, except in the commission of the most heinous crimes. To this end the provost was required to take an oath to the university promising that neither he nor his justices would lay their hands on a student or master for any offense whatsoever; that they would not place a student in prison unless he had just committed such a serious crime that he had to be taken into custody at once; and that they would take care, even in such instances, not to strike the student unless he resisted arrest. The king threatened to exact due satisfaction if he learned that a student had suffered any injuries when he had not resisted arrest. The arresting officer was also in such cases to hand over the student at once to the ecclesiastical judge who alone had the right to keep him in custody.³⁰

The bourgeoisie of the city of Paris were also charged with the obligation of coming to the scholars' aid if they were ill treated. They were required to swear that they would respect the rights and privileges of the scholars, that they would secure the arrest of anyone who molested a scholar, and that they would give information unsolicited against anyone whom they might see mistreating a scholar. The provost of Paris was further required to take an oath, in the presence of the scholars, that he would keep in good faith all the provisions above mentioned.³¹ From this oath taken by the provost to the university, there arose at a later time the practice of having civil cases in which the defendant was accused of violating any privileges granted by the king to the scholars tried in the court over which the provost presided, namely, the Chatelet. However, during the thirteenth and the fourteenth centuries, all ordinary criminal or ecclesiastical prosecutions against a scholar, or civil cases in which he was involved either as plaintiff or defendant, were customarily brought before the bishop's court or to the official who presided over the bishop's court.³²

In 1210, on behalf of the lay authorities, there was a more specific defini-

³⁰ Roger de Hoveden, *Chronica*, ed. W. Stubbs, Great Britain, Public Record Office, *Chronicles and Memorials* (London, 1871), IV, 120-21; *Chart. univ. Paris.*, I, no. 1, pp. 59-61; no. 12, pp. 72-73.

³¹ *Ibid.*

³² For the jurisdiction of the bishop's court, see Paul Fournier, *Les officialités au moyen âge: Etude sur l'organisation, la compétence, et la procédure des tribunaux ecclésiastiques ordinaires en France, de 1180 à 1328* (Paris, 1880).

tion of what legitimate methods of arrest and detention could be employed at Paris against criminous clerics or scholars. This was deemed necessary since the lay authorities were all too frequently incurring ecclesiastical condemnation and punishment because they laid hostile hands on a cleric. Under the new provisions, arrests of clerics or of scholars were not to be made nor were they to be imprisoned unless they were found to be engaging in such major crimes as homicide, adultery, or assault and battery with sticks, stones, or other weapons. If they should be seized while engaged in such nefarious deeds they were still to be turned over immediately to the ecclesiastical judge. However, if it was late at night, they might be held until the morning, but the place of detention must be seemly and not one in which there were thieves and other criminals. In the morning, they had to be turned over without delay to their ecclesiastical judge, the bishop of Paris or his official. For the further protection of clerics and scholars, it was ordered by the king that trial by battle or by ordeal should be refused to prisoners charged with assault on a scholar.³³

Despite the king's favor and the oaths taken by the bourgeoisie and the provost to uphold the privileges of the university, clashes between town and gown were frequent. The occasion for the serious conflict in 1229 was the summary execution of a scholar by the provost and the royal justices. In protest the university masters agreed to leave Paris. They journeyed to Reims, Orléans, England, Italy, Spain, and other parts of Europe.³⁴ A number went to the University of Toulouse in response to that university's invitation and promise of advantages and freedom not found elsewhere. In Toulouse, it was asserted, the scholars could read the books of Aristotle's natural philosophy which had been banned at Paris, and there they could enjoy scholastic liberty since they need not yield the reins of government to anyone; nor need they fear the malice of the people nor the tyranny of the prince. The count of Toulouse would provide sufficient security for them, would provide their salaries, and would provide for their servants coming and going to and from Toulouse.³⁵

The English king, Henry III, also took this occasion to extend a cordial invitation to the masters and scholars. He urged them to come to England and declared his compassion for the trials and tribulations which they had suffered under the iniquitous law of Paris. For the reverence of God and

³³ *Chart. univ. Paris.*, I, no. 13, pp. 72-73. For further provisions of the method of arrest, see *ibid.*, I, no. 197, A.D. 1251, pp. 222-24.

³⁴ *Ibid.*, I, no. 62, p. 118; Mathew Paris, *Chronica majora*, ed. H. R. Luard, Rolls Series, no. 57 (London, 1876), III, 166-69.

³⁵ *Chart. univ. Paris.*, I, no. 72, pp. 129-31.

the Holy Church he promised to try to win back for them their required liberty. He asserted that if it was pleasing to them to come to his kingdom for the purpose of study, he would assign them cities, towns, villages, or whatever they wished for their purpose. "In every way," the king declared, "we will make it possible for you to enjoy the liberty and tranquillity which pleases God and which ought to be yours to enjoy fully."³⁶

Finally the French king, Louis IX, intervened on behalf of the university scholars. He reaffirmed the privileges granted by Philip Augustus and repeated the provision that the provost and his justices were not to put their hands on any scholar nor were they to take him into custody unless he was engaged in an act requiring his immediate arrest.³⁷ This settlement, too, did not put an end to continued clashes between the provost of the town and the students. However, in all such clashes the university, until the fifteenth century, was able to win further concessions and privileges.

Similarly in Oxford, scholars or clerks and their retainers were under the jurisdiction of the chancellor's court, to which they might also summon their adversaries. As early as 1214, following the hanging of two clerics by the town authorities, the award of the papal legate ending the dispute provided that a clerk arrested by a townsman had at once to be surrendered to "the demand of 'the Bishop of Lincoln or the Archdeacon of the place or his Official, or the Chancellor, or whomsoever the Bishop of Lincoln shall depute to this office.'"³⁸

Although the exercise of exceptional jurisdiction by the university associations differed somewhat in the various university centers, there was general agreement that scholars might not be cited to appear in any secular or ecclesiastical courts outside the place of the schools and that the scholar might summon his adversary, even from a distant province,³⁹ for trial or judgment to the place where the scholar was residing. The declared purpose of this privilege was to permit scholars to apply themselves to their studies in a calm state of mind without the embarrassment and inquietude attendant upon the

³⁶ *Ibid.*, I, no. 64, p. 119.

³⁷ *Ibid.*, I, no. 66, pp. 120-22; Du Boulay, p. 5. For the French text of the oath to be taken by the provost, see *Chart. univ. Paris*, I, no. 67.

³⁸ Rashdall, III, 33 ff., 37; Salter, ed., *Medieval Archives of the University of Oxford*, I, 3; and for the increase of the chancellor's power, see also Herbert E. Salter, ed., *Registrum cancellarii Oxoniensis, 1434-1469*, Oxford Historical Society, nos. 93, 94 (1932), I, xx ff.

³⁹ At a later time charges against the abuse of this privilege were so frequent that they eventually led to a delimitation of the distances from which the scholars could summon their debtors and those bringing suit against them before their own judges, or conservators. Rebuff (*Privilegia universitatum*, pp. 241-42) reported that at Paris the distance was set at four *dietae* or about twenty miles and that Pope Innocent VIII reduced this in Spain to two *dietae* or ten miles in 1486. On the other hand in Montpellier, Rebuff asserted, the students could summon their debtors and others from a distance of five *dietae* or about twenty-five miles.

obligation of appearing at or carrying their suits to tribunals far off from the place of their actual residence. For, it was asserted, the obligation to appear in distant courts would consume time that should be employed in the study of letters as well as money which might better be utilized for living expenses or for the purchase of necessary books. The need for this privilege was forcefully set forth in a letter written by Stephen, bishop of Tournai, in the year 1174. The letter was addressed to William, archbishop of Sens and then minister of state under Louis VII, on behalf of a poor scholar who was being sued in regard to an inheritance outside of Paris. The scholar found himself faced with the necessity of either abandoning his property or of leaving his studies. He had therefore appealed for advice to the archbishop. And it was the archbishop's opinion that since the scholar was absenting himself from the court proceedings because of his studies, his failure to appear should not prejudice his case. However, the judge who was trying the suit, without consideration for the reasons given for the student's absence, pronounced against him. It was on this point that Stephen of Tournai made a special plea. He described the judge's decision, that absence because of studying did not constitute a just cause, as contrary to the common law (*juri communi contrarium*), and asserted that the consequences of such a decision would be extremely disastrous since young persons would no longer dare to leave their native countries to try to advance in liberal arts at distant schools lest they lose their property in their absence.⁴⁰

In France, too, as already noted, by papal intervention on behalf of the masters and students in the late twelfth century, the local clergy were restricted in their right to excommunicate the scholars, at the same time that there was a reaffirmation of the jurisdiction of the masters over their students. Thus between 1170 and 1172 Pope Alexander III had ordered the presbyter of "Burgo S. Remigius" to be punished severely for his violence against the scholars and for his promulgation of a sentence of excommunication against them. Despite the fact that the presbyter had undoubtedly been goaded to this action by the students and masters who had mocked and ridiculed him while he was leading the choristers, perhaps in an unseemly fashion, it was he alone who was taken to task. The papal decree forbade anyone to lay violent hands on the scholars, or to promulgate an ecclesiastical sentence against them, except in the presence of their masters, under whose jurisdiction they remained as long as they wished.⁴¹ This restriction of the promulga-

⁴⁰ Du Boulay, pp. 4-5, letter no. 23; J. P. Migne, *Patrologia Latina* (1855), CCXI, col. 321-22.

⁴¹ *Chart. univ. Paris.*, I, no. 5, p. 5; and the other references in n. 28 above.

tion of a general excommunication of the Paris scholars except by express permission of the Holy See was reaffirmed by Pope Honorius III in 1219, when he took the scholars of the University of Paris under his wing as his special charges, and again in 1222.⁴² It was reiterated by Pope Gregory IX on May 10, 1231, in his concession to the masters and scholars of Paris, that for seven years they might be free from the promulgation against them of a sentence of excommunication, suspension, or interdict, unless specially licensed by the Holy See.⁴³

In the course of the thirteenth and fourteenth centuries commentators on the *authentica Habita* interpreted and expanded Frederick's grant of protection to cover a number of basic privileges and exemptions not specifically mentioned in the *Habita* itself. These, as Koeppler reports from Odofredus, the thirteenth-century Bolognese professor of law, comprised exemptions from "tolls, duties, and customs both for the students and their attendants." Odofredus asserted that since the emperor granted a general protection to students they need not contribute to the upkeep of a police force. Hence they "need not pay tolls for their persons," since "tolls are levied for a police force." Furthermore according to Odofredus as reported by Koeppler, "no customs dues should be exacted for the books of the students, because such dues are levied on goods carried to be sold, and no decent student would ever dream of selling his textbooks."⁴⁴ Similar views were echoed by another thirteenth-century glossator, Accursius, who stated that it was not customary for scholars to pay the usual travelers tolls.⁴⁵

These views were also endorsed by the noted Bartolus in the fourteenth century. Bartolus held that the emperor had intended that students were to go to the place of the schools and were to remain there without hindrance and without the burdens of taxes. He asserted that this meant too that the students should be free from the various personal services usually required of residents of the towns so that they could freely devote themselves to their studies.⁴⁶

In the other university centers also, the monarchs not only reaffirmed the grants of privileges of their predecessors but in most cases they increased their scope. Thus Philip IV of France in 1295 and 1297 reiterated and en-

⁴² *Chart. univ. Paris.*, I, no. 30, pp. 87-88; no. 45, pp. 102-104; and cf. Rashdall, I, 311, n. 3; Feret, p. 358.

⁴³ *Chart. univ. Paris.*, I, no. 95, p. 147.

⁴⁴ Koeppler, p. 594, nn. 1, 2.

⁴⁵ Cited by Conring, pp. 177, 374. However, Conring points out, the assertion of this privilege of the immunity of scholars from the tolls and tribute (cf. Codex, IV, 61, *De vectigalibus*) did not originate until the end of the thirteenth century.

⁴⁶ Sheedy, p. 134 and notes, citing Bartolus, *Opera omnia* (11 vols., Venice, 1590-1602), VII, 122r; VIII, TL 23r.

larged upon the privileges granted by previous monarchs. He issued specific provisions for the exemption and immunity of scholars from the levies imposed for the needs of the war with the count of Flanders and from any tolls or tribute levied on goods and chattels belonging to students and masters in the kingdom of France. He asserted that they would be immune from all exactions for the support of the king's court, or of the members of the royal household, and from all customs taxes or personal obligations.⁴⁷ He also ordered his magistrates in 1307 and 1313 to permit the scholars to bring in their foreign moneys.⁴⁸ In his address to all his justices, in 1297, the king had made it clear that during the war with Flanders the masters and scholars studying at Paris and Orléans were not to be molested in any way and that they were to be under the special guardianship of the king. They were, in every instance, to be allowed to go and come freely and to carry their possessions unhampered throughout the kingdom, regardless of the nation of their origin. Moreover, the scholars were to be exempted from doing the watch and from serving on guard duty at the gates of the city except in time of great peril or when the enemy should be ten leagues away from the city.⁴⁹

In words somewhat reminiscent of those of Frederick Barbarossa, Philip IV, in March, 1313, defended his action in behalf of the students and masters:

We believe it right to have great concern for the hardships, the exertions, the sleepless nights, the drudgery, the deprivations, the tribulations and the perils which the scholars undergo to seek the precious pearl of knowledge, and to consider how they have left their friends, their kinsmen, and their native lands, how they have abandoned worldly goods and family fortunes to come from distant parts to drink of the waters flowing from the fountain of life. . . .⁵⁰

Similarly in Oxford, where the scholars were under royal protection as well as papal guardianship according to the ordinances of 1214, King Henry III before he left for his lands across the sea in April, 1242, felt it necessary to delegate the royal protection of the scholars to the archbishop of York, William "de Cantilupo," and William "de Eboraco."⁵¹ The king was also concerned for the welfare of the university scholars during the disturbances that accompanied the baronial conflict in 1264. He therefore asked the university to resume its lectures under specific royal pledges that all its immunities, customs, liberties, and privileges would be guaranteed and that the uni-

⁴⁷ Du Boulay, pp. 71 ff.; Paris, Archives Nationales, K 183, no. 5; *Chart. univ. Paris.*, II, no. 589, p. 65; no. 601, p. 75; no. 701, pp. 159-60.

⁴⁸ *Ibid.*, II, no. 660, p. 122, Aug. 13, 1307; no. 702, pp. 160-61, Apr. 23, 1313.

⁴⁹ *Ibid.*, II, no. 606, pp. 79-80.

⁵⁰ *Ibid.*, II, no. 701, pp. 159-60.

⁵¹ *Calendar of the Patent Rolls, Henry III, A.D. 1232-1247* (London, 1906), III, 283 (26 Hen. III).

versity scholars' belongings and lodgings would be reserved for them safely.⁵² The following year, 1265, the king exempted the students of Oxford from serving on juries and assizes as long as they were studying and were wearing the clerical habit.⁵³ John Peckham, archbishop of Canterbury, in July of 1279, also guaranteed to the scholars ecclesiastical protection for themselves, their belongings, and their privileges.⁵⁴

Provisions for the protection and safety of scholars also came at a later time to be interpreted in most university centers as including provisions for their housing and comfort and for the removing of obstacles to their application to intellectual endeavor. The need for housing was at all times acute. Hence in all universities, papal and royal decrees endeavored to meet this need, by specific enactments on behalf of the scholars. At Bologna, in the twelfth century, Pope Clement III prohibited rich students from taking away lodgings from poor students. He threatened with excommunication anyone who took another's lodgings before the expiration of his term of residence.⁵⁵ Innocent IV, at Lyons, in the second year of his pontificate, 1245, also prohibited under pain of excommunication the taking of the lodging of another by any master or scholar of Paris without the consent of the one living there.⁵⁶

In most universities the scholars were provided with some protection against grasping landlords through the provision that rents of halls or lodgings were to be appraised and fixed at a fair price determined by four appraisers, two of them masters elected by the university and two chosen by the townsmen. Provisions for this means of protecting students and masters from the rapacity of the landlords were guaranteed by both papal and royal decrees. Neither were able, however, to eradicate the difficulties encountered and had to be continuously repeated. At Oxford the legatine ordinance of 1214 which specifically mentioned this practice indicated that it was already in use before that date.⁵⁷ Yet in 1231 a royal writ of Henry III pointed out that scholars coming from various parts of the kingdom and from lands across the sea, though they brought honor to the entire kingdom, were obliged to complain

⁵² Salter, ed., *Medieval Archives of the University of Oxford*, I, 24-26.

⁵³ *Ibid.*, I, 26, Feb. 2, 1265.

⁵⁴ *Ibid.*, I, 35-36, July 31, 1279.

⁵⁵ Ludovico Vittorio Savioli, ed., *Annali bolognesi* (3 vols. in 6, Bassano, 1784-95), III, 166, no. 296; Mauro Sarti and Mauro Fattorini, *De claris Archigymnasii Bononensis professoribus* (Bologna, 1888-96), I, xxxiii-iv; Malden, pp. 32 ff. For the fourteenth-century application in Bologna of this problem of housing, see Sheedy, pp. 135 ff.

⁵⁶ *Chart. univ. Paris.*, I, no. 143, pp. 181-82; and for the opinion of the jurists, see Sheedy, pp. 135-36.

⁵⁷ Rashdall, III, 35, 92; Salter, ed., *Medieval Archives of the University of Oxford*, I, 2-3, 8; and see also p. 16.

loudly about the hospices and lodgings in the city. The king asserted that he feared that if these complaints were not heeded the scholars would leave the city, an eventuality which it was his hope to avert.⁵⁸ In Oxford, too, the principle had come to prevail that when a scholar had once hired lodgings he could not be disturbed in his occupation of them as long as he continued to pay his rent. But despite these regulations, the prices of lodgings continued to rise. Eventually the pressure upon poor or impoverished students aroused charitable benefactors to come to the rescue in a more effectual way. Philanthropic ecclesiastics and men of wealth established religious houses or colleges where poor scholars could enjoy the benefits of free lodgings. Later free board was added and in many houses small stipends or bursaries.⁵⁹

In Paris, too, housing continued to be a serious problem. The university masters from time to time called attention to the difficulties encountered by scholars in finding a place to live in the city. They referred to the frequent charges of avarice and greed brought against the landlords by the scholars. They revealed the dismal fact that complete success had not been achieved in curbing the unreasonable demands of the landlords by the device of a fixed price for lodgings set by appraisers chosen from the university and from the city.⁶⁰

The problem of housing was also tackled by Pope Gregory IX. In 1231 he confirmed the university faculties' right to assess and evaluate the rents to be charged for lodgings as well as their right to interdict lodgings where the landlords failed to abide by the university regulations.⁶¹ But even these strictures appeared to have had little effect on the obdurate landlords. The pope therefore appealed to King Louis IX to reinforce the power to fix the rents in accordance with the appraisal figures.⁶² However, the combined efforts of pope and king were apparently no more successful in curbing the rapacious landlords than those of the pope alone. It was therefore necessary, before an additional fourteen years had elapsed, for the university itself to devise and apply more stringent penalties to secure enforcement of the provisions on housing. The new regulations, drawn up in full university congregation at the Mathurins in February of 1245, provided that, if the proprietor of a dwelling refused to accede to the fixed price, his dwelling would be interdicted for five years, that is, he would be forbidden to rent his house to scholars

⁵⁸ *Letters of Henry III*, Rolls Series, I, 397-98; *Close Rolls of the Reign of Henry III*, A.D. 1227-1231 (London, 1902), III, 586-87 (15 Hen. III).

⁵⁹ Malden, pp. 32-33.

⁶⁰ Rashdall, I, 309; Jourdain, "La taxe des logements dans l'université de Paris," *Excursions historiques et philosophiques à travers le moyen âge* (Paris, 1888).

⁶¹ *Chart. univ. Paris.*, I, no. 79, p. 137.

⁶² *Ibid.*, no. 82, pp. 140-41; and see also nos. 80, 81, 88, 92, 93, 94, 429.

during that period. And if any master or student did take up residence there during that time, he would be obliged to leave at once upon receiving notice from the university rector or from his proctor. Failure to comply would be punishable by deprivation of all university privileges.⁶³

That the difficulties in this area continued, however, to plague the university masters and scholars is clear from the tenor of new measures provided by Louis IX in 1270. In that year the king commandeered the assistance of the provost of Paris and ordered him to make certain that the students and masters were not being required to pay the prices asked for lodgings where the rents had not been based on the appraisal figures.⁶⁴ Nevertheless despite these valiant efforts at control, it would appear, at Paris as at Oxford, alleviation of the housing problem was achieved only by the establishment of religious houses and hostels or colleges for poor scholars.

As further interpreted by the jurists, the provisions in the *authentica Habita* for protection and safety were held to imply a guarantee that the scholar would be protected from intrusion or invasion of his dwelling. An attack upon the home of the scholar was deemed a sacrilege. The provisions were also understood by some to assure the scholar of compensation for any thefts or losses that he might suffer during his stay at the university city.⁶⁵ Peter Rebuff held in particular that the scholars' books were protected against seizure. He asserted that even if the students or masters failed to pay their rent, as happened perhaps all too frequently, their landlord was strictly forbidden to take their books in payment for the rooms. For if he did so he would be upsetting or interrupting the study of letters, "from which proceed such great utility." However, if the scholar died, then the landlord could keep the books to pay for the funeral and other expenses. Rebuff added that a good scholar will find as much delight in his books as he will in a wife. He held, moreover, that because of the usefulness of books all writers of books are privileged. In this connection, Rebuff reported that he had seen persons condemned to hang in the year 1525 at Toulouse because they had burned books belonging to scholars.⁶⁶

An even broader interpretation of the concept of protection was the claim that it implied necessary guarantees for the scholar's comfort and the removal of any obstacles to his application to study. Thus the scholar must be assured freedom from interruption by disturbing noises. According to Bartolus, the scholar's right to expel a smith or anyone living in his house who should

⁶³ *Ibid.*, no. 136, pp. 177-78.

⁶⁴ *Ibid.*, no. 430, p. 484.

⁶⁵ Sheedy, pp. 136-37, n. 36.

⁶⁶ Rebuff, *Privilegia universitatum*, pp. 48-49; and cf. Sheedy, pp. 147-48.

disturb him in his studies was one of the peculiar privileges of a scholar. He could even expel a scholar living next door to him if that person made too much noise.⁶⁷ Peter Rebuff reported that this was the opinion too of John de Platea, who related that he had expelled a certain weaver living near the Collège du Vergier at Montpellier because the weaver sang in such a loud voice that he interfered with the students' study. The weaver was summoned to appear before the judge and was ordered to stop singing so loudly or to leave the premises. Since the weaver insisted that he was so accustomed to sing that he could not stop, he was obliged to leave the neighborhood. This move was justified, according to John de Platea, Peter Rebuff reported, because of the public utility which abides in scholars.⁶⁸ There were, however, some jurists who objected to the expulsion of a workman by a student and they contended that student privileges could not be so interpreted as to work an injustice on anyone. Hence the student could not injure the workman and prevent his continuing with his craft.⁶⁹ Rebuff asserted, moreover, that in his own time, the early sixteenth century, conditions were far different from those in the fourteenth century, since in many universities, as he had seen, contemporary judges protected the base persons and treated servingmen better than students.⁷⁰

At Oxford, King Edward I, in 1305, prohibited "tournaments, jousts, tiltings, or other games with spears," near the city because they might disturb the scholars. He ordered further that anyone who disobeyed this regulation should be arrested and imprisoned.⁷¹

Even more striking as an amplification of the principle of protection and safety for scholars were the efforts to protect them from various annoyances and from fraudulent, unsanitary, and unhealthy practices. In 1305, Edward I, in reply to a complaint of the university of Oxford, issued a writ that the paving of the streets in the city of Oxford should be repaired. The university had reported that the pavements were so torn up and broken that the students and masters were seriously impeded from walking about through the city, also that they were repelled by the reeking substances which were placed and collected in the streets and byways. At times, the report continued, the air became so foul that the masters and scholars and others traversing those parts were prevented by the nauseating stench from enjoying the benefits of

⁶⁷ *Repertorium Lauranum super trium librorum codicis commentariis divini Bartholi Saxoferratensis* (Venice, 1516), I, fol. 30v, col. 2; Bartolus, *Ad undecimum lib. codicis* (Venice, 1592), VIII, fol. 33v; Sheedy, pp. 137-38; Rebuff, pp. 16-17.

⁶⁸ *Ibid.*, pp. 12-15.

⁶⁹ Sheedy, pp. 137-38.

⁷⁰ See the reference in n. 68 above.

⁷¹ *Calendar of Close Rolls, Edward I, 1302-1307*, pp. 355, 361.

the fresh air. Furthermore, it was pointed out, decaying matter of this kind was a distinct menace to the health of those who were obliged to come and go in this area. The king therefore ordered that each holder of property repair the street in front of his holding. He also ordered that the lanes be cleared of all ill-smelling wastes and that the sows be removed from the streets and quarter entirely.⁷² Apparently this writ was not obeyed, since Edward II in 1311, and Edward III in 1331 and 1339, were obliged to issue others repeating the earlier provisions.⁷³

In 1305 too, Edward I had issued a writ prohibiting the melting of tallow in the streets since this caused the air to become so tainted that a great many of the masters and scholars of the university were frequently made ill.⁷⁴ The king had also in 1305 responded to another university complaint by issuing a writ ordering the brewers to use pure water obtained from clean places. The university masters and students had complained that the brewers of ale in the city used water near sewers and other unclean places, so that the ale sold from such areas was detrimental and dangerous to their health. This writ was followed by another ordering the sellers of ale and wine to discontinue the use of fraudulent measures and requiring them to submit all their measures for examination either by the chancellor of the university or at least in his presence.⁷⁵ Although all these matters had been dealt with earlier, in 1293, they had to be dealt with not only in 1305 but again and again on other occasions.⁷⁶ In the reign of Edward II the mayor and bailiffs were requested to see that wine that was for sale was submitted for examination to the chancellor and that any that was found to be putrid should be confiscated. The king asserted that he had been informed that many persons, both scholars and others, were often made very ill by spoiled wine and that the resulting infirmities were a distinct danger to life as well as a retarding influence on the application to study.⁷⁷

In 1310 Edward II also issued a writ to the effect that the butchers should not slaughter animals at Carfax and in the public squares in the city. The university had complained that butchers were killing animals and throwing their remains there and that the fetid odors rising from this decaying matter had caused a great many students and masters to fall seriously ill and even

⁷² Herbert E. Salter, ed., *Munimenta civitatis Oxonie*, Oxford Historical Society, no. 71 (1920), pp. 10-11 (33 Ed. I).

⁷³ *Ibid.*, p. 18 (5 Ed. II); Salter, ed., *Medieval Archives of the University of Oxford*, I, 120 (5 Ed. III); I, 136-38 (13 Ed. III).

⁷⁴ Salter, ed., *Munimenta civitatis Oxonie*, p. 13.

⁷⁵ *Ibid.*, pp. 11-13.

⁷⁶ *Ibid.*, pp. 291-94 (21 Ed. I), pp. 10-13, and *passim*.

⁷⁷ *Ibid.*, pp. 21-22.

on occasion to die from the effects. Moreover, a great many other students refused to come to Oxford for fear of suffering serious physical impairment. The king ordered therefore that such dangers must be eliminated and some remedy for the situation must be devised. The order had to be repeated in 1339 and again in 1355. In these writs the king insisted that the slaughtering of large animals within the city must be stopped and he ordered that the streets must be cleaned immediately and kept clean. The king assigned to the chancellor of the university, the mayor of the city of Oxford, and the heads of Merton College the task of supervising such cleaning as well as the expediting of punishment to those who did not comply with the royal commands. The order when repeated in 1355 pointed out that to Oxford came men of noble lineage who would be repelled by the lack of cleanliness and pure air.⁷⁸

Similar measures against unclean streets and the slaughtering of animals in the vicinity of the schools were taken by the French king in the city of Paris at the request of the university. Shortly after the return of King John of France from his imprisonment in England during the Hundred Years' War, the university asked the king to turn his attention to a serious problem that had been assailing the nostrils of the teaching masters for some time, namely, the close proximity to the schools of the slaughterhouses located on the Via Ste. Geneviève. In August of 1363, the king agreed to grant the university's request that he secure the enforcement of sanitary regulations upon these slaughterhouses, which, as the university masters pointed out, were polluting the streets night and day with the blood and remains of the beasts slaughtered. The king therefore issued an order prohibiting the throwing of wastes in front of houses and requiring the daily removal of all refuse deposited outside the walls and water courses of the city.⁷⁹ Three years later when the royal edict was reinforced by the Parlement of Paris, on June 23, 1366, and again on September 7 of the same year, the slaughterhouses were apparently still flourishing. The parliamentary decrees forbade the slaughtering of animals within the walls of the city of Paris and imposed fines for any infractions of the law. The university masters in 1366 had been obliged to repeat their complaint that the butchers, contrary to the royal ordinance, were causing untold distress to the residents of the colleges and to individuals liv-

⁷⁸ *Ibid.*, pp. 13-14 (4 Ed. II); Salter, ed., *Medieval Archives of the University of Oxford*, I, 136-37 (13 Ed. III); *Calendar of Charter Rolls Preserved in the Public Record Office* (London, 1916), V, 145-46.

⁷⁹ *Chart. univ. Paris.*, III, no. 1283, pp. 106-107; Arch. Nat., JJ 95, fol. lv, no. 3; Henri Sauval, *Histoire et recherches des antiquités de la ville de Paris* (Paris, 1724), III, 92; *Ordonnances des rois de France de la troisième race* (22 vols., Paris, 1723-1849), III, 639.

ing on the Via Ste. Geneviève and the Place Maubert. They pointed out that whereas formerly at the time of the royal ordinance of 1363, there were only eight butchers or slaughterhouses, there were now thirty-four or thereabouts, and each day their number was being augmented. And that in spite of royal ordinances and the fines assessed against them they were continuing to throw wastes into the streets so that day and night the air through the entire quarter and in the squares about was rendered so ill smelling and pestilential that it was dangerous to health.⁸⁰

Although the butchers endeavored to defend themselves by pointing out that it would be highly inconvenient to take the animals outside the city for slaughter and cleaning in preparation for their sale as the parliamentary decrees prescribed, their plea went unheeded. A new decree required them to do all the actual slaughtering and preparation of the animals outside the city of Paris in a place suitable for the purpose. They were no longer to obstruct or cause to be obstructed the sewers and waterways with such matter under penalty of paying a fine of sixty Parisian *solidi* for every infraction. However, if they violated the provisions requiring them to slaughter the animals outside the walls of the city they would be fined ten Parisian pounds and would be subject to removal from their occupations.⁸¹

To what extent these decrees were effective it is difficult to determine, particularly since the second half of the fourteenth century was to see the Hundred Years' War renewed by Charles V of France, and new and more pressing matters occupied the king, parlement, and the university.

As has already been suggested, the continued growth of the rights, privileges, and immunities of the students and masters both in English and French universities was seemingly at the expense of the local residents. Against these privileges and exemptions resentment grew and from time to time erupted in the succession of town and gown riots that plagued the various university centers. Frequent instances might be cited for both Oxford and Paris, but perhaps one of the most striking illustrations of the hostility of the populace was that of the bourgeoisie of Nevers on the Loire toward the masters and scholars who had migrated from Orléans.⁸² These scholars had been placed under the special protection of the king, and the populace had been warned in the name of the king against molesting the students and masters in their persons or belongings under penalty of imprisonment and confiscation of their possessions. Despite this royal admonition and special order, several of

⁸⁰ *Chart. univ. Paris.*, III, no. 1326, pp. 153-55.

⁸¹ *Ibid.*, III, no. 1327, p. 157.

⁸² For the migration of the students of Orléans to Nevers, see Rashdall, II, 148, and notes.

the bourgeoisie, in 1318, stormed the houses occupied by the professors and the scholars, as well as the dwellings of the bedels and the church of St. Martin.

Following a number of acts of vandalism, on March 18, 1319 (1318), an order was issued to the bailiff of Bourges that he inquire into the matter and submit a report on his findings to the Parlement of Paris. In the report made to that court, it was asserted that the residents of Nevers had unlawfully assembled against the masters and scholars. They had besieged the lodgings of a student named Guillaume de Beaujeu; they had successfully prevented the professors or doctors from giving their lectures, the bedels from exercising their functions, and the canons of St. Martin from ringing the customary bell to summon the students to the lectures. They had invaded the school of master Jacques "de Miseri," where they had broken the benches and the desk of the professor. They had then taken and carried the professor's desk about the town, shouting as they went: "Who wishes forty days of indulgence should follow us!" They had then thrown the desk into the Loire with the words, "Go to the devil whence you came to Orléans."⁸³

The commission named by the court to make the inquiry reported further that the city of Nevers although well populated did not form a corporation, nor a commune, for it had neither seal, nor bell, nor common properties. It had not even a common treasury. Hence the court must pronounce individual condemnations and list the condemned persons and the fines to be levied against them. The fines were then to go to each of the doctors or professors and the syndic of the schools who had suffered at the hands of the populace.⁸⁴

There were numerous other instances of wounding and even of the murder of students and masters according to the records of the Parlement of Paris. There were also frequent occasions when quarrels arose regarding who was to exercise jurisdiction in particular cases. But perhaps the foregoing illustrations in specific circumstances of the application of the privileges and immunities in the Middle Ages will suffice to illustrate their general tenor and expression. That these "rights, privileges, and immunities" which early found formal expression in Roman civil and canon law and later reappeared in specific royal and ecclesiastical enactments were largely concerned with the external relations of students and professors as well as with the external conditions of intellectual endeavor is clear. The "rights, privileges, and immunities" of the medieval scholar had little to do with the intellectual process

⁸³ *Actes du Parlement de Paris*, ed. Edgard Boutaric, 1st series (Paris, 1863-67), II, 276-77 (Criminel III, fol. 162v.).

⁸⁴ *Ibid.*, II, 322 (June 21, 1320), 329 (Sept. 16, 1320).

itself or with what is today called "academic freedom." In that sphere, which is outside the scope of this paper, the medieval universities as autonomous or semiautonomous associations exercised a powerful supervision, not only over their own members but also over others outside their associations.

To anyone who has concerned himself with the documentary remains of the Middle Ages, it is clear that these centuries, in which every prince and every corporate association considered himself or itself the guardian of inherent rights, cannot be characterized as eras of uniformity or of general conformity to prescribed formulas of behavior and action. And nowhere is this lack of compliance with general theories and principles better illustrated than in the matter of the application of the scholarly "rights, privileges, and immunities" so clearly assigned to scholars and clerics in civil and canon law. In every instance it was necessary to make specific grants of privileges to meet specific needs or, as in the case of the English kings, to issue specific writs in answer to specific complaints to secure the observance of particular privileges for the university masters and scholars. Even in such cases the extent to which the privileges granted would be observed in practice was dependent upon the ability of the monarch to make his power felt. And where it was possible for the royal authority to prevail, popular resentment and resistance, however suppressed, were clearly present.

By the close of the fifteenth century, the universities as autonomous associations were in most countries to fall a prey to the successful onward march of the national monarchs, especially on the continent of Europe. Professors and students were to lose their rights as members of autonomous or semiautonomous university associations, but they were to retain their privileged position in the light of the monarch's favor. And particularly in France,⁸⁵ as the king's protected minions, they were to retain their privileges and immunities until these were swept away with other remnants of the Old Regime at the close of the eighteenth century. Only in England were the universities to retain some semblance of their earlier autonomy and vested rights. From England these rights, privileges, and immunities which in the Middle Ages distinguished the university associations as well as their professors and scholars were no doubt carried to America. And here they still survive in words which we can all read in our carefully preserved diplomas or hear on each commencement evening with the conferring of the academic degrees. Shades or symbols of the past they may be. But to the historian they bind the past and the present and evoke a host of images of intrepid scholars

⁸⁵ Cf. Pearl Kibre, *The Nations in the Mediaeval Universities* (Cambridge, Mediaeval Academy of America, 1948), pp. 112 ff.

who recognized no political, economic, or physical barriers and who braved every obstacle to seek out new fields of intellectual endeavor or new paths to worldly fame. The historical grants of rights, privileges, and immunities by emperors, popes, monarchs, or municipal magistrates provide unassailable testimony and evidence of the presence of foreign scholars in places far from their native soil. And in this they are of great significance. But they in no way lead us to conclude that such grants of privileges or immunities alone provided the inspiration, the urge, and the strength that led such scholars on. The grants of privileges followed rather than preceded the appearance of those traveling scholars whose adventuresome, boisterous, and unruly antics strike a familiar chord and appeal because they are so manifestly human. The source of the impetus that urged them on can best be found perhaps in what Professor Rostovtzeff once so aptly described, in a conference of the American Historical Association, as "an effervescence of the human spirit."

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